

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 22-CR-20114-KMW

UNITED STATES OF AMERICA,

vs.

CARLOS RAMON POLIT FAGGIONI,
_____ /

**POLIT’S OPPOSITION TO (ECF#151)
GOVERNMENT’S EXHIBITS RELATING TO PROPOSED
404B EVIDENCE RE: SPANISH BUSINESSMAN**

The government filed the emails that the government proposes to offer in evidence pertaining to the alleged transaction with the Spanish businessman. ECF#151.

In addition to the reasons stated in Polit’s motion to exclude 404b evidence (ECF#126) and argued during the status conference on March 27, 2024, the emails should also be excluded as hearsay because under Fed. R. Evid. 801(d)(2)(E), the Court may not rely on the out-of-court statements alone (*i.e.*, the emails) to find that an alleged conspiracy existed with the Spanish businessman or that Polit allegedly participated in it.

In *United States v. Hough*, 803 F.3d 1181, 1193 (2015), the Eleventh Circuit held:

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For a co-conspirator statement to be admissible under that rule, the government must show by a preponderance of the evidence that: (1) a conspiracy existed; (2) the defendant and the declarant were members of the conspiracy; and (3) the statement was made during the course and in furtherance of the conspiracy.

In determining whether the government has met those three requirements, the district court may consider both the co-conspirator's out-of-court statement and evidence independent of it. **The rule expressly provides, however, that '[t]he statement ... does not by itself establish ... the existence of the conspiracy or participation in [it].'**

Hough, 803 F.3d 1181, 1193 (2015) (emphasis added).

Here, the only proposed evidence the government is offering relating to the alleged transaction with the Spanish businessman are the out-of-court statements contained in the emails. No witness with knowledge of the alleged transaction will be testifying at the trial. Thus, because "the [emails] ... by themselves do not establish ... the existence of the conspiracy or participation in it," the emails are hearsay and should be excluded.

Respectfully submitted,

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